

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Genevieve Lamont	Team: Squad #8	CCRB Case #: 202002669	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/08/2020	Location of Incident: Intersection of East 165th Street and Boston Road	Precinct: 42	18 Mo. SOL 10/8/2021	EO SOL 5/4/2022	
Date/Time CV Reported Wed, 04/08/2020 12:13 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 04/13/2020 11:36 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Merita Hoxha	11713	955988	042 PCT
2. POM Dennis Vargas	07471	957245	042 PCT
3. POM Anthony Alvino	04731	961613	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Merita Hoxha	Abuse: Police Officer Merita Hoxha stopped § 87(2)(b)	
B.POM Dennis Vargas	Abuse: Police Officer Dennis Vargas stopped § 87(2)(b)	
C.POM Anthony Alvino	Abuse: Police Officer Anthony Alvino stopped § 87(2)(b)	
D.POM Dennis Vargas	Abuse: Police Officer Dennis Vargas frisked § 87(2)(b)	
E.POF Merita Hoxha	Abuse: Police Officer Merita Hoxha frisked § 87(2)(b)	
F.POM Anthony Alvino	Abuse: Police Officer Anthony Alvino frisked § 87(2)(b)	
G.POM Anthony Alvino	Abuse: Police Officer Anthony Alvino refused to provide his name to § 87(2)(b)	
H.POM Anthony Alvino	Abuse: Police Officer Anthony Alvino refused to provide his shield number to § 87(2)(b)	
I.POM Anthony Alvino	Abuse: Police Officer Anthony Alvino failed to provide § 87(2)(b) with a business card.	
J.POF Merita Hoxha	Abuse: Police Officer Merita Hoxha refused to provide her name to § 87(2)(b)	
K.POF Merita Hoxha	Abuse: Police Officer Merita Hoxha refused to provide her shield number to § 87(2)(b)	
L.POF Merita Hoxha	Abuse: Police Officer Merita Hoxha failed to provide § 87(2)(b) with a business card.	
M.POM Dennis Vargas	Abuse: Police Officer Dennis Vargas refused to provide his name to § 87(2)(b)	
N.POM Dennis Vargas	Abuse: Police Officer Dennis Vargas refused to provide his shield number to § 87(2)(b)	
O.POM Dennis Vargas	Abuse: Police Officer Dennis Vargas failed to provide § 87(2)(b) with a business card.	

Case Summary

On April 8, 2020, § 87(2)(b) filed the following complaint with the Internal Affairs Bureau (IAB), generating original IAB log #2020-10141. The CCRB received the case on April 13, 2020.

On April 8, 2020, just before midnight, § 87(2)(b) was walking in the vicinity of E. 165th Street and Boston Road in the Bronx, when he was stopped by three plainclothes officers, PO Dennis Vargas, PO Anthony Alvino, and PO Merita Hoxha, who were all of the 42nd Precinct at the time of the incident (**Allegations A through C: Abuse of Authority; § 87(2)(g)**). All three officers then frisked § 87(2)(b)'s jacket (**Allegations D through F: Abuse of Authority; § 87(2)(g)**). § 87(2)(b) asked all three officers continually for their names and badge numbers, which they refused to provide, and did not provide § 87(2)(b) with their business cards. (**Allegations G through O: Abuse of Authority; § 87(2)(g)**).

§ 87(2)(b) provided the investigation with cellphone footage of the incident [BR01]. Due to a malfunction with the docking port at the 42nd Precinct, there is no body-worn camera (BWC) footage of the incident [BR02, BR03, BR04].

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Merita Hoxha stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Dennis Vargas stopped § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Anthony Alvino stopped § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Dennis Vargas frisked § 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Merita Hoxha frisked § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Anthony Alvino frisked § 87(2)(b)

It is undisputed that PO Vargas, PO Alvino, and PO Hoxha stopped and frisked § 87(2)(b). § 87(2)(b) testified that, as he was walking, he observed a Chevy Impala driving northbound. The area was lit with street lights. Just as he reached the intersection of E. 165th Street and Boston Road, the car pulled up next to him and PO Hoxha exited the vehicle. PO Vargas and PO Alvino also exited the vehicle and all three officers grabbed § 87(2)(b)'s coat and shook it. No officer said anything to § 87(2)(b) prior to this. The officers also patted down § 87(2)(b)'s pant's pockets, although they did not enter them. § 87(2)(b) was carrying his wallet, keys, and lighter in his pants pockets, and his AirPods case in his coat pocket; he stated there were no bulges in his pockets and only his wallet made an outline in his pants pocket. § 87(2)(b) has his cellphone on him, but did not recall where on his body it was. § 87(2)(b) continually asked the officers what they were doing during the frisk, although no officer answered him [BR05].

PO Vargas prepared a stop report for the incident, which stated that the officers observed § 87(2)(b) for one minute "manipulating a hard object" in his jacket pocket "bearing the general size and shape of a firearm". PO Vargas noted in the report that during the observation period, § 87(2)(b) made eye contact with the officers and appeared to attempt to hide from the officers while walking in the opposite direction. Upon conducting a U-turn, PO Vargas noted that § 87(2)(b) appeared extremely nervous and attempted to conceal the hard object by "blading" the left side of his body. Due to "the overall circumstances of § 87(2)(b)'s] demeanor and actions", the officers believed him to be in possession of a weapon. Upon "closer inspection", the officers observed portions of the hard object "protruding" from the pocket, resembling an L-shaped bulge. Upon frisking § 87(2)(b) the object was determined to be a cellphone, which the stop report noted was "stuffed in his pocket in a certain angle that created the L-shaped outline" [BR06].

PO Vargas testified that he did not have an independent recollection of the incident and provided his testimony based on the stop report he prepared. As he was driving northbound on Boston Road, he observed § 87(2)(b) walking southbound. As he drove parallel to § 87(2)(b)

PO Vargas observed him grab a hard object in his coat pocket, which appeared to create an L-shaped outline, consistent with a firearm. PO Vargas stated that § 87(2)(b) looked nervous, as he was making eye contact with him and moved closer to the row of parked cars by the sidewalk, although PO Vargas did not know if he leaned his body towards the cars or physically moved towards them. § 87(2)(b) was only a couple feet from the cars and PO Vargas did not know how close § 87(2)(b) moved towards them. PO Vargas continued to drive northbound as he observed this. PO Vargas determined, based on what he observed above, to stop § 87(2)(b) as he believed he was in possession of a firearm. As PO Vargas, PO Alvino, and PO Hoxha approached § 87(2)(b) he turned his body to the left, which PO Vargas characterized as “blading”, although he did not know to which degree he did this. He observed an L-shaped object in § 87(2)(b) s pocket, which was at a 45-degree angle. PO Vargas then frisked § 87(2)(b) which he believed was in the pocket area, but did not recall. He did not recall if PO Alvino or PO Hoxha frisked § 87(2)(b) Upon frisking § 87(2)(b) PO Vargas determined that the L-shaped bulge was a cellphone, although he did not recall what kind of cellphone [BR02].

PO Alvino did not recall the incident and stated that the incident stop report did not refresh his recollection. He did not recall why § 87(2)(b) was stopped or if he frisked § 87(2)(b) [BR03].

PO Hoxha also did not recall the incident and stated that the incident stop report did not refresh her recollection. She did not recall why § 87(2)(b) was stopped or if she frisked § 87(2)(b) [BR04].

People v. DeBour 40 N.Y. 2d 210 (1976) states that an officer may stop a person when he has reasonable suspicion that the person has committed, is committing, or is about to commit a felony or misdemeanor. An officer may frisk an individual that has been stopped if the officer reasonably suspects that the person is armed and dangerous [BR07].

People v. Allen 489 N.Y.S 2d 749 (1985) determines that “innocuous behavior alone will not generate a founded or reasonable suspicion that a crime is at hand” [BR08].

§ 87(2)(g)

[REDACTED]

Allegation (G) Abuse of Authority: Police Officer Anthony Alvino refused to provide his name to § 87(2)(b)

Allegation (H) Abuse of Authority: Police Officer Anthony Alvino refused to provide his shield number to § 87(2)(b)

Allegation (I) Abuse of Authority: Police Officer Anthony Alvino failed to provide § 87(2)(b) with a business card.

Allegation (J) Abuse of Authority: Police Officer Merita Hoxha refused to provide her name to § 87(2)(b)

Allegation (K) Abuse of Authority: Police Officer Merita Hoxha refused to provide her

shield number to § 87(2)(b)

Allegation (L) Abuse of Authority: Police Officer Merita Hoxha failed to provide § 87(2)(b) with a business card.

Allegation (M) Abuse of Authority: Police Officer Dennis Vargas refused to provide his name to § 87(2)(b)

Allegation (N) Abuse of Authority: Police Officer Dennis Vargas refused to provide his shield number to § 87(2)(b)

Allegation (O) Abuse of Authority: Police Officer Dennis Vargas failed to provide § 87(2)(b) with a business card.

It remains in dispute if the officers refused to give their names and shield number or failed to provide their business cards to § 87(2)(b)

§ 87(2)(b) stated that he continually asked for the officers' names and shield numbers throughout the incident, but that no officer ever responded to him. After the officers finished frisking § 87(2)(b) one of the officers informed § 87(2)(b) that they had stopped him because he matched a description. The officers then directed § 87(2)(b) to stay on the sidewalk as they returned to their vehicle. § 87(2)(b) pulled out his cellphone and began recording the officers, yelling that he wanted their names and badge numbers. No officer responded to this request and they left the scene. § 87(2)(b) did not receive any of the officer's business cards during the incident [BR05]. § 87(2)(b) called IAB and filed a complaint 13 minutes after the incident, in which he also stated that the officers left the scene without providing their information [BR09].

§ 87(2)(b) provided cellphone footage of the incident to the investigation. The video opens with § 87(2)(b) yelling at the officers that he wants their names and badge numbers. No officer is heard responding to this and they drive off scene as § 87(2)(b) shouts obscenities towards them [BR01]. There is no BWC of the incident [BR02, BR03, BR04].

PO Vargas testified that, upon first approaching § 87(2)(b) he identified himself and provided the reason for the stop. PO Vargas stated that he has a "routine speech" for every stop that he conducts, in which he provides his name, shield number, rank, reason for the stop and provides his business card. He believed that he offered his business card to § 87(2)(b) who was too irritated to take it, which he noted on the stop report, although PO Vargas was unable to ascribe what § 87(2)(b) did or said that led him to believe that. He did not recall if § 87(2)(b) at any point requested his name or shield number [BR02]. PO Vargas was shown the cellphone footage but stated that the footage did not refresh his memory of § 87(2)(b) requesting his name and shield number and maintained that he provided this information at the beginning of the encounter [BR10].

PO Alvino did not recall the incident. He did not recall if § 87(2)(b) requested his name and shield number but stated that he is required to provide this information upon request. He did not recall if he provided his business card to § 87(2)(b) but stated that he carries his business cards on his person. Upon viewing the cellphone footage, PO Alvino stated that the footage did not refresh his recollection of the incident and that he was unable to identify himself or the other officers, as the video was blurry [BR03].

PO Hoxha also did not recall the incident. She did not recall if § 87(2)(b) requested her name and shield number but stated that she is required to provide this information upon request. She did not recall if she provided her business card to § 87(2)(b) but stated that she carries her business cards on her person. Upon viewing the cellphone footage, PO Hoxha stated that the footage did not refresh her recollection of the incident or § 87(2)(b) asking for her name and shield number, and stated that, due to the poor video quality, she was unsure if she was in the cellphone footage [BR04].

As per Patrol Guide Procedure 203-09, a member of service must offer a business card, unless a summons is issued or an arrest is made, for a stop where an officer has an individualized, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime and where a reasonable person would not feel free to leave. The

procedure also states that, in such an instance, a member of service must clearly state their rank, name, and shield number, and command, or otherwise provide them, to anyone who requests an officer does so [BR11].

New York City Administrative Code 14-174 states that during a law enforcement activity, an officer shall: 1. Identify himself or herself to the person who is the subject of such law enforcement activity by providing his or her name, rank and command; 2. Provide to such person an explanation of the reason for such law enforcement activity, unless providing such information would impair a criminal investigation; 3. Offer a business card to such person at the conclusion of any such activity that does not result in an arrest or summons (Board Review 15).

§ 87(2)(g)

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint § 87(2)(b) has been party to [BR12].
- PO Vargas has been a member of service for six years and has been subject in eight prior CCRB cases and 11 allegations, two of which were substantiated:
 - An entry – premises allegation for case #201506210, in which the Board recommended charges, which the NYPD upheld and PO Vargas forfeited three vacation days.
 - A failure to provide an RTKA card allegation for case #201904508, in which the Board recommended command level instructions and is awaiting final disposition from the NYPD.
 - PO Vargas has an open CCRB complaint, case #202002500, in which allegations of a frisk, vehicle stop, and vehicle search, are pled, which is currently under investigation.
- PO Alvino has been a member of service for four years and has been a subject in three prior CCRB cases and six allegations, none of which have been substantiated. PO Alvino's CCRB history does not reflect a pattern pertinent to this investigation.
 - PO Alvino currently has an open CCRB complaint, case #202002500, in which a threat of force allegation is pled, that is currently under investigation.
- PO Hoxha has been a member of service for seven years and has been subject in eight prior CCRB cases and 14 allegations, five of which have been substantiated:
 - Case #201806458, in which a frisk, question, and search – person allegation was substantiated. The Board recommended Command Discipline B and the NYPD disposition recommended Formalized Training, which PO Hoxha received.

- Case #201903423, in which a failure to provide RTKA card allegation was substantiated, and the Board recommended Command Discipline A. The NYPD has yet to determine a disposition.
- Case #201904508, in which a failure to provide RTKA card allegation was substantiated, and the Board recommended Command Level Instructions. The NYPD has yet to determine a disposition.

Mediation, Civil and Criminal Histories

- Mediation was rejected for this case.
- On April 30, 2021, a FOIL request was submitted with the New York City Office of the Comptroller to determine if a Notice of Claim was filed for this incident, the results of which will be added to the case file upon its receipt [BR13].

• § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Squad No.: 8

Investigator: Genevieve Lamont Inv. Genevieve Lamont 05/07/2021
Signature Print Title & Name Date

Squad Leader: Ethan De Angelo IM Ethan De Angelo 5/7/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date